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IN THE SUPREME COURT
OF THE NORTHERN TERRITORY
OF AUSTRALIA
AT ALICE SPRINGS

Nos.34,35,36,37,38,39 and 40 of 1985

BETWEEN:

VALERIE GRACE CAWOOD, IAN STANLEY CAWOOD, DEBBIE THERESECONNOR, LYNETTE JOY BEASY, ARTHUR DEREK ROFF, FRANCIS JOHN MORRIS AND MARGARET ANNETTE MORRIS
Plaintiffs

AND:

PHIL WARD
First Defendant

CORAM: KEARNEY J

RULING

(Delivered 24 November 1994)

On 24 October 1994 there was a case-flow management callover of these 7 proceedings before me; they are all actions for defamation instituted by the respective plaintiffs Valerie Cawood, Ian Cawood, Debbie Connor, Lynette Beasy, Arthur Roff, Francis Morris and Margaret Morris.

In each action the first defendant was Phil Ward; the second defendant was Griffin Press Limited. In each action the plaintiff reached a settlement with the second defendant some

years ago. Each action was subsequently discontinued by the plaintiff against the second defendant which, in turn, discontinued against the 2 Third Parties it had joined. In the result, the only remaining parties to each of the actions are the respective plaintiff and the (common) first defendant Mr Ward.

For case-flow management purposes, each of these proceedings was originally in the "current" list. On 5 February 1993, during one of the regular case-flow management callovers of pending actions, proceeding no. 34 of 1985 was placed in the "dormant" list. On 9 December 1993 at the request of Ms Osborne, the solicitor for the first defendant, Thomas J ordered that proceeding no. 34 of 1985 be restored to the "current" list.

At the callover on 24 October 1994 Ms Osborne informed me that her client wanted the actions to remain on foot, as he wished to have them determined by the Court; he contended that he has not defamed any of the plaintiffs and he wanted to have his name cleared in that regard. He has taken no steps in any of the 7 proceedings since 1990, when he changed his solicitor. Mr Bennett, the solicitor for the 7 plaintiffs in their respective actions, informed me that none of them now has any interest in pursuing their respective actions against the first defendant, in view of their settlements with the second defendant; nevertheless, they do not wish to discontinue their actions against Mr Ward, because of the costs sanction involved.

Mr Bennett was concerned at the costs being incurred by the plaintiffs, as the proceedings come on repeatedly for

mention at each case-flow management callover, without any steps being taken by the first defendant to pursue his rights. Accordingly, Mr Bennett sought to have all 7 proceedings placed on the "dormant" list.

Ms Osborne informed me that her client is awaiting counsel's advice, before taking any further steps in any action. She submitted that the onus lay on the plaintiffs either to pursue their actions by setting them down for trial, or to discontinue them against the first defendant and pay his costs. It appears that the first defendant is currently not in a financial position to pursue his rights, by taking any further step in the actions. Ms Osborne stated, for example, that she had no instructions to apply to have any of the actions dismissed for want of prosecution. She submitted that the first defendant should not be required to pay the plaintiffs' costs of the callovers, since the callovers were instituted by the Court and not by the first defendant.

Against that background I now proceed to rule on the matters raised at the callover. The Supreme Court Rules for case-flow management proceed on the assumption that it is in the interests of the parties and the community at large that an action once instituted should be determined as expeditiously as practicable. However, for the reasons I have mentioned, none of the parties to those proceedings wishes to take any positive step at this time to bring any of these proceedings to a resolution. That is to say, none of them are presently concerned to pursue their substantive rights or their procedural rights, under the Rules. For example, the first defendant does not seek

to have any of the actions dismissed for want of prosecution, under r24.01; none of the plaintiffs propose to seek leave to discontinue their actions under r25.02(2)(b), and thereby bring them to an end, no doubt because that would render them liable for the first defendants' costs, under r25.05 read with r63.11(6).

In this situation, it appears to me that the further calling-over of these proceedings is both a waste of the time of the Court and an unnecessary expense for the parties. To all intents and purposes, these actions are presently dormant, as a result of intentional and deliberate lack of activity by all of the plaintiffs and the first defendant. I see no reason in those special circumstances why the Court should compel parties to pursue their rights, simply to "clear the books" of the Court. Accordingly, and exceptionally, I direct that these 7 proceedings be stood out of the list of cases in the Court's regular case-flow management callover of outstanding cases, unless and until one or other of the parties applies to have one or other of them included in a callover for the purpose of instituting some step in the Court to pursue his or her substantive or procedural rights. The position should, however, be reviewed in 12 month's time; they should be included in the last call-over list in 1995.

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